

ELOUISE PEPION COBELL, et al.,  
Plaintiffs,  
v.  
GALE A. NORTON, Secretary of the Interior, et al.,  
Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFFS'  
MOTION FOR ADDITIONAL ENLARGEMENT OF TIME  
TO SUBMIT EQUAL ACCESS TO JUSTICE APPLICATION**

Plaintiffs have filed their Motion For Additional Enlargement Of Time To Submit Equal Access To Justice Act Application ("Second Motion For Enlargement"), in which they attempt to bootstrap more delay onto their First Motion For Enlargement, apparently assuming that motion will be granted. Yet, the Court has not ruled on their First Motion For Enlargement<sup>1</sup> and the date has long since passed on which the Court ordered them to submit their interim EAJA application.<sup>2</sup> As with their First Motion For Enlargement, Plaintiffs offer no valid reason for their continued delay and their motion should be denied.<sup>3</sup>

In their Second Motion For Enlargement, Plaintiffs repeat all the reasons for delay listed

<sup>1</sup> Plaintiffs submitted their Motion For Enlargement Of Time To Submit Equal Access To Justice Application ("First Motion For Enlargement") on June 14, 2004. Defendants filed their Opposition to that Motion on June 22, 2004, and Plaintiffs filed their Reply on June 29, 2004.

<sup>2</sup> On May 27, 2004, the Court ordered Plaintiffs to submit an application for interim fees under EAJA within thirty days. Cobell v. Norton, 319 F. Supp. 2d 36 (D.D.C. 2004) ("May 27, 2004 Order").

<sup>3</sup> Plaintiffs failed to attach a proposed order to their motion, in violation of LCvR 7(c).

in their previous motion - the time required to properly evaluate time records, competing case demands, their fee application in connection with Defendants' Third Motion For Summary Judgment,<sup>4</sup> and time spent on mediation. Second Motion For Enlargement at 1-3. Yet they still fail to explain why they did not perform the required due diligence in evaluating time records prior to submitting their First EAJA Application in October 2003, or why they have failed to do so in the nine months since that time. The Court was undoubtedly aware of competing case demands when it issued its May 27, 2004 Order requiring Plaintiffs to submit an interim EAJA application within thirty days. Most important, Plaintiffs were aware of competing case demands when they chose to set this interim fee application process in motion nine months ago, without the required documentation.

The only "new" reason Plaintiffs cite for their continued delay is their claim that it has taken "longer than anticipated" to obtain information relating to market rates for the time-period covering Trial 1.<sup>5</sup> Second Motion For Enlargement at 3. Plaintiffs provide no factual support for their purported difficulty in obtaining this information and do not explain what technical assistance they seek from an expert; instead, they claim that their "preferred expert" is unavailable and that they have been "unavoidably delayed." Second Motion For Enlargement at

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<sup>4</sup> Plaintiffs continue to rely on preparation of this fee application as a reason for delay, Second Motion For Enlargement at 2, even though they filed that fee application on June 22, 2004.

<sup>5</sup> Plaintiffs have not yet met their burden of establishing that they are entitled to compensation at market rates, in excess of EAJA's statutory cap. See May 27, 2004 Order at 7 (requiring Plaintiffs to substantiate allegations of bad faith with "detailed factual support" and not rely on "an offhand reference" to language in the Court's prior opinions). Accordingly, the Court ordered Plaintiffs to submit alternative fee schedules based on EAJA capped rates, market rates, and rates under the Laffey matrix. Id. at 7.

3. It is hard to fathom how Plaintiffs would be unable to obtain information on market rates in the nine months between the time they filed their first petition in October 2003, and the present. They submitted a defective application for interim EAJA fees nine months ago and offer no legitimate justification for their failure to comply with the Court's subsequent order to submit a new application within thirty days of May 27, 2004.

### **Conclusion**

For these reasons, Defendants respectfully request that the Court deny Plaintiffs' Second Motion For Enlargement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 21, 2004 the foregoing *Defendants' Opposition to Plaintiffs' Motion for Additional Enlargement of Time to Submit Equal Access to Justice Application* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., )  
)  
Plaintiffs, )  
)  
v. )  
)  
GALE NORTON, Secretary of the Interior, et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. 1:96CV01285  
(Judge Lamberth)

**ORDER**

This matter comes before the Court on *Plaintiffs' Motion For Additional Enlargement Of Time To Submit Equal Access to Justice Application*, Dkt # 2613, and any responses thereto. The Court finds that the Motion should be and hereby is DENIED.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
ROYCE C. LAMBERTH  
United States District Judge

cc:

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